

IN ACCORD

Special Considerations in Workplace Mediation

The following are generalizations about mediation in workplaces within the Shared Neutrals program and are intended to spark discussion. These ideas are predicated on the idea that the mediator is helping parties repair relationships, rather than negotiating post-employment terms.

Workplace Mediation

Neighborhood Mediation Non-Domestic Relations

Pre-Mediation

There are unique considerations in workplace cases before the case ever really “starts”.	Mediation set-up is usually more straight forward
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- ? Parties may need to be assured regarding confidentiality and potential retaliation (e.g. Need clear understanding of what will and will not be reported to a manager)
- ? Initial contact may be with a manager who needs to be educated about the voluntary and confidentiality nature of the process
- ? Clarify role of HR Department and union. Are public records laws applicable?
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Impact on Party

Mediator is intervening in larger part of party’s overall life	Only family mediation deals with a larger “portion” of the parties’ lives
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Ramifications for Mediator:

- ? The situation is of greater importance to the parties, so expect higher intensity
- ? Parties’ investment in conflict, issues & outcomes means difficult mediation
- ? Parties’ emotional investment leads to more delicate mediation handling
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Parties’ Relationship

The parties’ have a strong familiarity with and knowledge of each other. Their relationship is more “complex”	There is often a “simpler” relationship between the parties
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Ramifications for Mediator:

- ? Mediator always needs to be humble about what you think you know
- ? It may be easier for the parties to “push each other’s buttons”
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Party's Expectations

Mediator expected to be more "business-like"	Parties have lower expectation about the mediator's demeanor
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Ramifications for Mediator:

- ? Parties will expect greater competency from the mediator
- ? Parties will look for subtle signs of mediator bias in dress, demeanor and attitude
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Party Behavior

Parties more constrained in whether and how they "act out" in session	Fewer rules and norms governing party conduct
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Ramifications for Mediator:

- ? Mediation can be more "light-handed" in managing party interaction
- ? Mediator may have to prod parties beyond their usual "professional decorum"
- ? Parties often unclear about what should be brought to the table. That is, what is "personal" and what is "professional"
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Participants

Advocates, representatives and organizational spokespersons might be present	Parties usually speak for themselves
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Ramifications for Mediator:

- ? Not always dealing directly with the principal parties (e.g. the parties' manager, who is "the real problem," is not present)
- ? Need for central, key parties at the table if the employment relationship is to continue.
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Legal Framework

Mediation taking place against a complex, legal backdrop about which parties are educated or not savvy	Parties less sophisticated about legal options
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Ramifications for Mediator:

- ? Parties may take a "legalistic" view of the case (e.g. concerns about mediation's relationship to performance review, grievance processes, etc.)
- ? Mediator might consider understanding some of the legal parameters
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Case Logistics

A professional meeting and environment is more known to parties		Parties less likely to naturally interact in this type of meeting room environment
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Ramifications for Mediator:

- ? Mediator should consider off-site location. Who wants to be sent to the little room with everyone watching?
- ? Parties not paying directly for mediation may affect resolution incentives
- ? Often need management approval to schedule additional sessions
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Timeline

Parties usually able and willing to dedicate more time to the case, both in short term and over the long haul		Parties less likely to willingly dedicate great amount of time to case and less likely to return to mediation
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Ramifications for Mediator:

- ? Mediator has opportunity to work more thoroughly with the parties and schedule multiple sessions
- ? Interim agreements more feasible
- ? 90% of the work happens in the last 10% of the time allocated for the mediation
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Party Incentive to Resolve

Because their jobs and job satisfaction are "at stake," parties more motivated for resolution		Parties less likely to have self-preservation in mind during the discussions
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Ramifications for Mediator:

- ? Parties are more afraid because their livelihoods are at stake and may be more irrational in the "intersection of Logic and Emotion."
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Power Dynamics

In supervisor-subordinate mediation, there is a built in power differential		Power is more nebulously defined and held
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Ramifications for Mediator:

- ? Mediator cannot erase the substantive power differences between parties
- ? The process can have only a temporary leveling effect, don't over promise
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Voluntariness

Because of organizational pressure for resolution, party participation less authentically voluntary.		Participation likely to be more genuinely voluntary
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Ramifications for Mediator:

- ? Mediator needs to emphasize and ensure the voluntary nature of the process
- ? Mediator needs to explore whether the parties are reaching a “resolution” or just a “settlement” where they both walk away unhappy.
- ? Parties might feel that they are “being sent to the principal’s office”
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Impact of Third Parties

Mediation takes place in larger context, so that parties are dealing with co-workers, the “organization”, etc.		The surrounding context is less prevalent for the parties.
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Ramifications for Mediator:

- ? Mediator needs to clarify what can be changed and what cannot (“We can only deal with the two of you, not fixing the organization.”)
- ? Mediator may benefit from pointing out commonalities and common enemies, etc.
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Process “Flow”

Because parties know each other well, their conversation can be more organic. Less structure is required.		More amenable to a more structured process
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Ramifications for Mediator:

- ? Mediator should not artificially control the process
- ? Important for mediator to “stay out of their way” while nudging them forward
- ? Parties more attuned to the other party’s subtle clues (e.g. “I have seen that eye roll before”)
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Settlement

Interim agreements are more the norm than are one all encompassing "settlement"		Finalized, full spectrum "settlements" are common
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Ramifications for Mediator:

- ? Mediator may not want to fixate on settlements or even agreements, but rather allow the parties to reconnect interpersonally
- ? Parties need to determine what will be reported to others about what transpired
- ? Some final agreement provisions may conflict with grievance and employment procedures
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Post-Mediation Options

Parties have internal organizational alternatives following mediation (e.g. grievance, discipline, etc.)		Parties have fewer attractive options following mediation
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Ramifications for Mediator:

- ? Effects party motivation to mediate and resolve
- ? Unfortunately, mediation is often misused as a "last step" in trying to resolve workplace dysfunction
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